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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,432	07/29/2003	Raj Dosanjh	300110548-2	7840

7590	09/20/2007
HEWLETT-PACKARD COMPANY	
Intellectual Property Administration	
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EXAMINER	
VETTER, DANIEL	

ART UNIT	PAPER NUMBER
3628	

MAIL DATE	DELIVERY MODE
09/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/630,432	Applicant(s) DOSANJH, RAJ	
	Examiner Daniel P. Vetter	Art Unit 3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-13,15-21,23 and 24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-13,15-21,23 and 24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

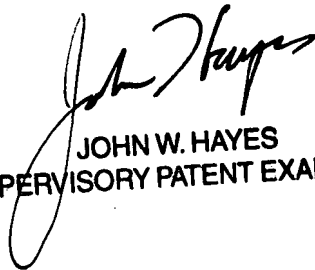
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



JOHN W. HAYES
SUPERVISORY PATENT EXAMINER

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DETAILED ACTION

Status of the Claims

1. Claims 1-2, 4-13, 15-21, and 23-24 were previously pending in this application. Claims 1, 12, 23, and 24 were amended in the reply filed August 23, 2007. Claims 1-2, 4-13, 15-21, and 23-24 are currently pending in this application.
2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 23, 2007 has been entered.

Specification

3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: METHOD FOR DETERMINING INFORMATION TECHNOLOGY COMMODITY PRICING.

Response to Arguments

4. Applicant's arguments with respect to claims 1-2, 4-13, 15-21, and 23-24 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-2, 4-7, 11-13, 15-18, and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takriti, U.S. Pat. No. 6,021,402 (Reference A of the PTO-892 part of paper no. 20061207) in view of Pitchford, et al., U.S. Pat. No. 6,327,541 (Reference B of the PTO-892 part of paper no. 20061207) and Rose, et al., U.S. Pat. No. 5,963,920 (Reference A of the attached PTO-892).

7. As per claim 1, Takriti teaches a method of determining a price at which a supplier provides a commodity to a customer, the method being performed by the supplier and comprising: characterising nature of growth of the customer's usage of the commodity (column 7, lines 59-60); receiving information from the customer specifying the commodity required (column 7, lines 65-67); and determining a price for the commodity used (column 7, lines 30-31; column 8, line 17), the determined price being dependent on a level of commercial risk associated with the nature of growth of the customer's usage of the commodity (column 8, lines 60-62), and an industry average price for the commodity at the time of determination of the price (column 5, lines 2-3). Takriti does not explicitly teach receiving notification of the use of a quantity of the commodity by the customer, and that the determined price is dependent on the quantity of the commodity used by the customer; and if the usage monitoring indicates that the customer has a need for more or less of the commodity, the method further comprises effecting provision of more or less of the commodity from the supplier to the customer. Pitchford teaches receiving notification of the use of a quantity of the commodity by the customer (column 3, lines 7-11), and that the determined price is dependent on the quantity of the commodity used by the customer (column 10, line 26). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to

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incorporate receiving notification of the use of a quantity of the commodity by the customer, and that the determined price is dependent on the quantity of the commodity used into the method taught by Takriti in order to provide an energy management system that provides data in terms of consumption, demand, cost per rate of consumption, or total cost (as taught by Pitchford, column 2, lines 65-67). Pitchford further teaches if the usage monitoring indicates that the customer has a need for more or less of the commodity, the method further comprises effecting provision of more or less of the commodity from the supplier to the customer (column 5, lines 11-14). It would have been prima facie obvious to incorporate if the usage monitoring indicates that the customer has a need for more or less of the commodity, the method further comprises effecting provision of more or less of the commodity from the supplier to the customer into the method taught by Takriti in view of Pitchford in order to meet the particular requirements of a particular user site (as taught by Pitchford, column 5, line 12). Takriti in view of Pitchford does not explicitly teach the method performed by the supplier; which is taught by Rose (column 2, lines 39-49). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate the above teachings of Rose into the method taught by Takriti in view of Pitchford so that the supplier can be informed of the minute commodity needs of the customer (as taught by Rose; column 2, lines 51-52).

8. As per claim 2, Takriti in view of Pitchford and Rose teaches the method of claim 1 as described above. Pitchford further teaches that the step of receiving notification of the use of a quantity of the commodity further comprises monitoring the customer's usage of the commodity (column 3, line 8). It would have been prima facie obvious to incorporate the above teachings of Pitchford into the method taught by Takriti in view of Pitchford and Rose in order to provide an energy management system that provides data in terms of consumption, demand, cost per rate of consumption, or total cost (as taught by Pitchford, column 2, lines 65-67).

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9. As per claim 4, Takriti in view of Pitchford and Rose teaches the method of claim 2 as described above. Takriti further teaches the customer's usage history of the commodity, as monitored by the supplier, is used to dynamically reassess the nature of growth of the customer's usage of the commodity, and the associated level of commercial risk (column 7, lines 59-60; column 8, line 61).

10. As per claim 5, Takriti in view of Pitchford and Rose teaches the method of claim 1 as described above. Takriti teaches that the nature of growth of the customer's usage of the commodity is characterised (column 7, lines 59-60) and that a level of commercial risk is determined (column 8, line 53). However, Takriti in view of Pitchford and Rose does not teach that the characterizations are constant growth, explosive growth or volatile growth and that the level of commercial risk is low, high or intermediate. These characterizations and levels are merely recitations of non-functional descriptive material. It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate these characterizations into the method taught by Takriti in view of Pitchford and Rose because non-functional descriptive material cannot render non-obvious an invention that would otherwise have been obvious. *In re Gulack*, 703 F.2d 1381, 1385; 217 USPQ 401, 404 (Fed. Cir. 1983).

11. As per claim 6, Takriti in view of Pitchford and Rose teaches the method of claim 1 as described above. Takriti further teaches in the step of receiving information from the customer specifying the commodity required, the commodity is selected from a plurality of alternatives in a same category of commodity (column 8, line 49; Examiner is interpreting types of fuel as alternatives within the same category of the commodity electricity).

12. As per claim 7, Takriti in view of Pitchford and Rose teaches the method of claim 6 as described above. Pitchford further teaches the same category of commodity is one of a plurality of categories and a selection is made from more than one category (column 7, lines 15-20), and wherein the alternatives available for selection in each category are modified in response to customer's preference data, or on the basis of

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previously-selected commodities (column 5, lines 2-4; column 6, lines 56-61). It would have been prima facie obvious at the time of invention to incorporate the above teachings of Pitchford into the method taught by Takriti in view of Pitchford and Rose in order to provide an energy management system that provides data in terms of consumption, demand, cost per rate of consumption, or total cost (as taught by Pitchford, column 2, lines 65-67).

13. As per claim 11, Takriti in view of Pitchford and Rose teaches the method of claim 1 as described above. Takriti further teaches the method is executed using a computer program (Abstract).

14. As per claim 12, Takriti teaches a computer readable storage medium for storing a computer program (Abstract) operable to determine a price at which a supplier provides a commodity to a customer, the computer program being operable to: receive input characterising nature of growth of the customer's usage of the commodity (column 7, lines 59-60); receive input specifying the commodity required by the customer (column 7, lines 65-67); and determine a price for the commodity used (column 7, lines 30-31), the determined price being dependent on a level of commercial risk associated with the nature of growth of the customer's usage of the commodity (column 8, lines 60-62), and an industry average price for the commodity at the time (column 5, lines 2-3). Takriti does not explicitly teach that the program is operable to receive input comprising notification of the use of a quantity of the commodity by the customer, and that the determined price is dependent on the quantity of the commodity used; and if the usage data indicates that the customer has a need for more or less of the commodity, the program is operable to effect provision of more or less of the commodity from the supplier to the customer. Pitchford teaches that the program is operable to receive input comprising notification of the use of a quantity of the commodity by the customer (column 3, lines 7-11), and that the determined price is dependent on the quantity of the commodity used (column 10, line 26). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate that the program is

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operable to receive input comprising notification of the use of a quantity of the commodity by the customer, and that the determined price is dependent on the quantity of the commodity used into the program taught by Takriti in order to provide an energy management system that provides data in terms of consumption, demand, cost per rate of consumption, or total cost (as taught by Pitchford, column 2, lines 65-67). Pitchford further teaches if the usage data indicates that the customer has a need for more or less of the commodity, the program is operable to effect provision of more or less of the commodity from the supplier to the customer (column 5, lines 11-14). It would have been prima facie obvious to incorporate if the usage data indicates that the customer has a need for more or less of the commodity, the program is operable to effect provision of more or less of the commodity from the supplier to the customer into the program taught by Takriti in view of Pitchford in order to meet the particular requirements of a particular user site (as taught by Pitchford, column 5, line 12). Takriti in view of Pitchford does not explicitly teach the method performed by the supplier; which is taught by Rose (column 2, lines 39-49). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate the above teachings of Rose into the medium taught by Takriti in view of Pitchford so that the supplier can be informed of the minute commodity needs of the customer (as taught by Rose; column 2, lines 51-52).

15. As per claim 13, Takriti in view of Pitchford and Rose teaches the medium of claim 12 as described above. Pitchford further teaches the program operable to receive data from a remote device specifying the usage of the commodity by the customer (column 5, lines 15-20). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate the above teachings of Pitchford into the program taught by Takriti in view of Pitchford and Rose in order to provide an energy management system that provides data in terms of consumption, demand, cost per rate of consumption, or total cost (as taught by Pitchford, column 2, lines 65-67).

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16. As per claim 15, Takriti in view of Pitchford and Rose teaches the medium of claim 13 as described above. Takriti further teaches the program operable to interpret the customer's usage history of the commodity to dynamically reassess the nature of growth of the customer's usage of the commodity, and the associated level of commercial risk (column 7, lines 59-60; column 8, line 61).

17. As per claim 16, Takriti in view of Pitchford and Rose teaches the medium of claim 12 as described above. Takriti teaches that the nature of growth of the customer's usage of the commodity is characterised (column 7, lines 59-60) and that a level of commercial risk is determined (column 8, line 53). However, Takriti in view of Pitchford and Rose does not teach that the characterizations are constant growth, explosive growth or volatile growth and that the level of commercial risk is low, high or intermediate. These characterizations and levels are merely recitations of non-functional descriptive material. It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate these characterizations into the program taught by Takriti in view of Pitchford and Rose because non-functional descriptive material cannot render non-obvious an invention that would otherwise have been obvious. *Gulack*, 217 USPQ at 404.

18. As per claim 17, Takriti in view of Pitchford and Rose teaches the medium of claim 12 as described above. Takriti further teaches when receiving input specifying the commodity required by the customer, the commodity is selected from a plurality of alternatives in a same category of commodity (column 8, line 49; Examiner is interpreting types of fuel as alternatives within the same category of the commodity electricity).

19. As per claim 18, Takriti in view of Pitchford and Rose teaches the medium of claim 17 as described above. Pitchford further teaches the same category of commodity is one of a plurality of categories and a user makes a selection from more than one category (column 7, lines 15-20), and wherein the computer program modifies the alternatives available for selection in each category following input of customer

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preference data, or on the basis of previously-selected commodities (column 5, lines 2-4; column 6, lines 56-61). It would have been prima facie obvious at the time of invention to incorporate the above teachings of Pitchford into the program taught by Takriti in view of Pitchford and Rose in order to provide an energy management system that provides data in terms of consumption, demand, cost per rate of consumption, or total cost (as taught by Pitchford, column 2, lines 65-67).

20. As per claim 23, Takriti teaches a price determination device comprising a processor (Abstract) operable to implement a method of determining a price at which a supplier provides a commodity to a customer, the method comprising: characterising nature of growth of the customer's usage of the commodity (column 7, lines 59-60); receiving information from the customer specifying the commodity required (column 7, lines 65-67); and determining a price for the commodity used (column 7, lines 30-31), the determined price being dependent on a level of commercial risk associated with the nature of growth of the customer's usage of the commodity (column 8, lines 60-62), and an industry average price for the commodity at the time of determination of the price (column 5, lines 2-3). Takriti does not explicitly teach receiving notification of the use of a quantity of the commodity by the customer, and that the determined price is dependent on the quantity of the commodity used. Pitchford teaches receiving notification of the use of a quantity of the commodity by the customer (column 3, lines 7-11), and that the determined price is dependent on the quantity of the commodity used (column 10, line 26). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate receiving notification of the use of a quantity of the commodity by the customer, and that the determined price is dependent on the quantity of the commodity used into the device taught by Takriti in order to provide an energy management system that provides data in terms of consumption, demand, cost per rate of consumption, or total cost (as taught by Pitchford, column 2, lines 65-67). Takriti in view of Pitchford does not explicitly teach the method performed by the supplier; which is taught by Rose (column 2, lines 39-49). It would have been

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prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate the above teachings of Rose into the device taught by Takriti in view of Pitchford so that the supplier can be informed of the minute commodity needs of the customer (as taught by Rose; column 2, lines 51-52).

21. As per claim 24, Takriti teaches price determination device comprising a processor (Abstract) executing a program to determine a price at which a supplier provides a commodity to a customer, the program being operable to cause the processor to: receive input characterising nature of growth of the customer's usage of the commodity (column 7, lines 59-60); receive input specifying the commodity required by the customer (column 7, lines 65-67); and determine a price for the commodity used (column 7, lines 30-31), the determined price being dependent on a level of commercial risk associated with the nature of growth of the customer's usage of the commodity (column 8, lines 60-62), and an industry average price for the commodity at the time (column 5, lines 2-3). Takriti does not explicitly teach the device operable to receive input comprising notification of the use of a quantity of the commodity by the customer, and that the determined price is dependent on the quantity of the commodity used. Pitchford teaches the device operable to receive input comprising notification of the use of a quantity of the commodity by the customer (column 3, lines 7-11), and that the determined price is dependent on the quantity of the commodity used (column 10, line 26). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate the device operable to receive input comprising notification of the use of a quantity of the commodity by the customer, and that the determined price is dependent on the quantity of the commodity used into the device taught by Takriti in order to provide an energy management system that provides data in terms of consumption, demand, cost per rate of consumption, or total cost (as taught by Pitchford, column 2, lines 65-67). Takriti in view of Pitchford does not explicitly teach the method performed by the supplier; which is taught by Rose (column 2, lines 39-49). It would have been prima facie obvious to one having ordinary skill in the art at the time

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of invention to incorporate the above teachings of Rose into the device taught by Takriti in view of Pitchford so that the supplier can be informed of the minute commodity needs of the customer (as taught by Rose; column 2, lines 51-52).

22. Claims 8-10 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takriti in view of Pitchford and Rose as applied to claims 1 and 12 above, and further in view of Official Notice.

23. As per claim 8, Takriti in view of Pitchford and Rose teaches the method of claim 1 as described above. Takriti in view of Pitchford and Rose does not teach that the commodity price determination is done in the information technology industry. Official Notice had been taken and supported by documentary evidence in the Office action mailed May 30, 2007 that it is old and well established that the information technology industry uses various commodities, such as power and processor availability (see e.g., *Call for Participation: Seventh Workshop on Hot Topics in Operating Systems*, Reference U of the PTO-892 part of paper no. 20061207; hereinafter "HotOS-VII"). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate the above finding of Official Notice into the method taught by Takriti in view of Pitchford and Rose because the information technology industry uses various commodities which must be priced by their suppliers.

24. As per claim 9, Takriti in view of Pitchford, Rose, and Official Notice teaches the method of claim 8 as described above. Takriti in view of Pitchford and Rose does not teach the categories of commodities include storage capacity, server processing capability, and level of support service required. Official Notice had been taken and supported by documentary evidence in the Office action mailed May 30, 2007 that it is old and well established that the information technology industry uses the commodities of storage capacity, server processing capability, and support service (see e.g., HotOS-VII). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate the above finding of Official Notice into the method

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taught by Takriti in view of Pitchford, Rose, and Official Notice because they are some of the main inputs into computers and computer networks, which are the backbone of the information technology industry.

25. As per claim 10, Takriti in view of Pitchford, Rose, and Official Notice teaches the method of claim 9 as described above. Official Notice had been taken regarding the commodities of storage capacity or server processing capability as described above. Pitchford further teaches the step of receiving notification of the use of a quantity of the commodity is performed using monitoring and reporting software or hardware installed on a server of the customer (column 6, lines 35-45). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate the above teachings of Pitchford into the method taught by Takriti in view of Pitchford, Rose, and Official Notice in order to provide an energy management system that provides data in terms of consumption, demand, cost per rate of consumption, or total cost (as taught by Pitchford, column 2, lines 65-67).

26. As per claim 19, Takriti in view of Pitchford and Rose teaches the program of claim 12 as described above. Takriti in view of Pitchford and Rose does not teach that the commodity price determination is done in the information technology industry. Official Notice had been taken and supported by documentary evidence in the Office action mailed May 30, 2007 that it is old and well established that the information technology industry uses various commodities, such as power and processor availability (see e.g., HotOS-VII). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate the above finding of Official Notice into the program taught by Takriti in view of Pitchford and Rose because the information technology industry uses various commodities which must be priced by their suppliers.

27. As per claim 20, Takriti in view of Pitchford, Rose, and Official Notice teaches the program of claim 19 as described above. Takriti in view of Pitchford and Rose does not teach the categories of commodities include storage capacity, server processing capability, and level of support service required. Official Notice had been taken and

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supported by documentary evidence in the Office action mailed May 30, 2007 that it is old and well established that the information technology industry uses the commodities of storage capacity, server processing capability, and support service (see e.g., HotOS-VII). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate the above finding of Official Notice into the program taught by Takriti in view of Pitchford, Rose, and Official Notice because they are some of the main inputs into computers and computer networks, which are the backbone of the information technology industry.

28. As per claim 21, Takriti in view of Pitchford, Rose, and Official Notice teaches the program of claim 19 as described above. Pitchford further teaches the data specifying the usage of the commodity by the customer is supplied from monitoring software or hardware installed on a server of the customer (column 6, lines 35-45). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate the above teachings of Pitchford into the method taught by Takriti in view of Pitchford, Rose, and Official Notice in order to provide an energy management system that provides data in terms of consumption, demand, cost per rate of consumption, or total cost (as taught by Pitchford, column 2, lines 65-67).

Conclusion

29. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel P. Vetter whose telephone number is (571) 270-1366. The examiner can normally be reached on Monday through Thursday from 8am to 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571) 272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.